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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Petition to Revoke
12 Probation Against,

Case No. 2006-112

13 **TRACIE CELESTE BRADLEY THOMAS**
14 **9070 Lemon Street**
Spring Valley, CA 91977

PETITION TO REVOKE PROBATION

15 **Registered Nurse License No. 526020**

16 Respondent.
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19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Petition to Revoke Probation
22 solely in her official capacity as the Interim Executive Officer of the Board of Registered
23 Nursing, Department of Consumer Affairs.

24 2. On or about September 3, 1996, the Board of Registered Nursing issued Registered
25 Nurse License Number 526020 to Tracie Celeste Bradley Thomas (Respondent). The Registered
26 Nurse License was in effect at all times relevant to the charges brought herein and will expire on
27 September 30, 2010, unless renewed.

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3. In a disciplinary action entitled "In the Matter of Accusation Against Tracie Celeste Bradley Thomas," Case No. 2006-112, the Board of Registered Nursing, issued a decision, effective March 12, 2007, in which Respondent's Registered Nurse License was revoked. However, the revocation was stayed and Respondent's Registered Nurse License was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Petition to Revoke Probation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code states:

The lapsing or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such license, or to render a decision suspending or revoking such license.

7. Condition R of Respondent's probation states:

If Respondent violates the conditions of probation, after giving her notice and an opportunity to be heard, the Board may set aside the stay order and impose the stayed discipline (revocation) of Respondent's license.

During the period of probation, if a Petition to Revoke Probation and/or Accusation is filed against Respondent's license or the Attorney General's office has been requested to prepare a Petition to Revoke Probation and/or Accusation against her license, the probationary period shall automatically be extended and shall not expire until the Petition to Revoke Probation and/or Accusation is acted upon by the Board.

1 8. Grounds exist to revoke Respondent's probation and reimpose the order of revocation
2 of her Registered Nurse license in that she has violated the conditions of her probation as follows:

3 **FIRST CAUSE TO REVOKE PROBATION**

4 **(Failed to Comply with the Board's Probation Program)**

5 9. Condition B of Respondent's probation states, in pertinent part, that Respondent shall
6 fully comply with the conditions of the Probation Program established by the Board and
7 cooperate with representatives of the Board in its monitoring and investigation of Respondent's
8 compliance with the Board's Probation Program.

9 10. Respondent's probation is subject to revocation in that she failed to fully comply with
10 the conditions of the Probation Program, as more particularly set forth below.

11 **SECOND CAUSE TO REVOKE PROBATION**

12 **(Failed to Submit Work Performance Evaluations in a Timely Manner)**

13 11. Condition G of Respondent's probation states, in pertinent part, that Respondent shall
14 cause to be submitted to the Board all performance evaluations and other employment reported
15 reports as a registered nurse.

16 12. Respondent's probation is subject to revocation because she failed to comply with
17 Probation Condition G, referenced above. Respondent was required to have her supervisor
18 submit quarterly performance evaluations to the Board, starting in the quarter beginning on July
19 1, 2007. No quarterly reports were submitted until October 29, 2008, at which time all the
20 evaluations for the first five quarters were finally submitted. Respondent did not submit the
21 Work Performance Evaluations for January-March of 2009 until January 4, 2010.

22 **THIRD CAUSE TO REVOKE PROBATION**

23 **(Failure to Comply with the Random, Biological Fluid Testing or Drug Screening Program)**

24 13. Condition N of Respondent's probation states, in pertinent part, that Respondent shall
25 submit, upon request, as the Board may require, to random, biological fluid testing or a drug
26 screening program, at any time during the probation. In addition, if Respondent has a positive
27 drug screen and a Petition to Revoke Probation is filed, the Board may suspend Respondent from
28 practice pending the final decision on the Petition.

1 14. Respondent's probation is subject to revocation because she failed to comply with
2 Probation Condition N, referenced above. Respondent tested positive for alcohol on June 2,
3 2009, June 10, 2009 and December 7, 2009. Respondent missed tests on February 11, 2009, June
4 19, 2009 and July 27, 2009. Respondent failed to have her drug screen tests observed on the
5 following dates: September 18, 2009, October 9, 2009, October 22, 2009, October 26, 2009,
6 November 3, 2009, November 10, 2009 and November 17, 2009.

7 **FOURTH CAUSE TO REVOKE PROBATION**

8 **(Failed to Submit Verification of On-Going Treatment)**

9 15. Condition P of Respondent's probation states, in pertinent part, that Respondent shall
10 participate in an on-going counseling program and cause to be submitted to the Board progress
11 reports from her counselor.

12 16. Respondent's probation is subject to revocation because she failed to comply with
13 Probation Condition P, referenced above, in that she failed to submit verification of on-going
14 treatment.

15 **FIFTH CAUSE TO REVOKE PROBATION**

16 **(Failed to Make Timely Payments)**

17 17. Condition Q of Respondent's probation states, in pertinent part, that Respondent shall
18 reimburse the Board for its investigation and enforcement costs in the sum of \$3,600.00.

19 18. Respondent's probation is subject to revocation because she failed to comply with
20 Probation Condition Q, referenced above, in that she failed to make all of the monthly payments
21 in a timely fashion. Respondent's current balance owed to the Board is \$1,710.00.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Board of Registered Nursing issue a decision:

25 1. Revoking the probation that was granted by the Board of Registered Nursing in Case
26 No. 2006-112 and reimposing the order of revocation of Registered Nurse License No. 526020
27 issued to Tracie Celeste Bradley Thomas;

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2. Taking such other and further action as deemed necessary and proper.

DATED: 01/20/10 *for* *Louise Bailey*
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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FILED
CLERK OF SUPERIOR COURT
SAN FRANCISCO
JAN 21 2010

Exhibit A

Decision and Order

Board of Registered Nursing Case No. 2006-112

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TRACIE CELESTE BRADLEY THOMAS
9070 Lemon Street
Spring Valley, CA 91977

Registered Nurse License No. 526020

Respondent.

Case No. 2006-112


OAH No. L2006030212

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on March 12, 2007.

IT IS SO ORDERED February 9, 2007.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TRACIE CELESTE BRADLEY THOMAS
9070 Lemon Street
Spring Valley, CA 91977

Case No. 2006-112

OAH No. L2006030212

Registered Nursing License No. 526020

Respondent.

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on September 8, 2006.

James M. Ledakis, Deputy Attorney General, represented Ruth Ann Terry, M.P.H., R.N., Executive Officer of the Board of Registered Nursing.

Respondent was present and represented herself.

The matter was submitted on September 8, 2006.

FACTUAL FINDINGS

1. Ruth Ann Terry, M.P.H., R.N., filed Accusation, Case No. 2006-112, dated January 23, 2006, against Tracie Celeste Bradley Thomas (Respondent), in her capacity as the Executive officer of the Board of Registered Nursing (Board).

2. On September 3, 1996, the Board issued Registered Nursing License Number 526020 to Respondent. At all times relevant herein, said license was in full force and effect and will expire on September 30, 2008, unless renewed.

3. On April 30, 2001, Respondent was arrested by a California Highway Patrol (CHP) officer for driving under the influence of alcohol (DUI). She was stopped for driving on the wrong side of the road. At the time of her arrest, Respondent had an open container of

"Kenya Gold Liquor" in the front seat and her six-month-old infant in the back seat. Though the infant was in a safety restraint seat, it was not secured in the vehicle. Respondent had a strong smell of alcohol, slurred speech and was uncooperative when the officers attempted to place her under arrest. She struggled with the officers and used foul language to insult them. She was transported to the station as her daughter was transported to her parents' home. Respondent refused to have her blood alcohol level tested. She was transported to the CHP Office for a non-consensual blood draw. Thereafter, Respondent was verbally abusive to the officers. She called them "Fu . . . stupid idiots" and told them that they better not ever come into her hospital. Once at Las Colinas, Respondent was taken to the medical screening where she told the officers, "I'm going to shove an enema up your ass without Vaseline." Respondent's blood alcohol content (BAC) was .30, more than three times the legal limit.

4. On July 27, 2001, a four count misdemeanor complaint was filed against Respondent as follows:

- Count 1: Driving under the influence and refusal of a chemical test.
- Count 2: Driving while having a measurable alcohol level in excess of .20
- Count 3: Resisting an officer
- Count 4: Disturbing the peace by offensive language

5. On August 13, 2001, in the Superior Court of California, County of San Diego, East County Division, Case Number C.214691, in the case entitled *The People of the State of California v. Tracie Celeste Bradley*, on her plea of guilty, Respondent was convicted of violation of Vehicle Code section 23152, subsection (b), driving under the influence of alcohol (DUI) while having a .08 per cent or more by weight of alcohol in her blood; in the commission of the foregoing offense, Respondent had a BAC of 0.20 percent or more, by weight, within the meaning of Vehicle Code section 23578.

6. As a consequence of the conviction, the Court placed Respondent on five years informal probation and ordered her to:

- serve two days in custody,
- pay a fine of \$1,600.00,
- complete the first conviction program,
- totally abstain from alcohol,
- not drive with a measurable amount of alcohol/drugs in her system,
- submit to a test for detection of alcohol/drugs in her system at the request of a peace officer, and
- obey all laws.

7. Respondent has been convicted of a DUI offense that is substantially related to the qualifications, functions and duties of a registered nurse, by reason of Findings 3, 4, 5 and 6.

8. Respondent has been convicted of an offense that involved the consumption of alcohol to an extent and in a manner dangerous to herself, another person and/or the public, by reason of Findings 3, 4, 5 and 6. Given the foregoing, her misconduct constitutes unprofessional conduct.

9. While on probation for her first conviction for DUI (Findings 3, 4, 5 and 6), on April 25, 2003, while driving under the influence of alcohol, Respondent rear ended another vehicle. After the accident, she and the other driver moved their vehicles to a nearby parking lot. A CHP officer conducted an investigation that included interviews. Respondent appeared glassy eyed, and her speech was slow. Respondent admitted to the CHP officer that she had been drinking alcoholic beverages earlier; she appeared disoriented and could not recall the details of the accident. Based upon Respondent's objective symptoms of intoxication, her performance on the field sobriety test, her admissions and the statement of the other driver involved in the accident, the CHP officer formed the opinion that she had been driving under the influence of an alcoholic beverage; and her continued operation of her vehicle would be unsafe. He arrested Respondent for DUI. She was transported to Sharp Memorial Hospital (Sharp Hospital) for a legal blood draw. Due to her injuries, Respondent was released from custody at Sharp Hospital. The other driver was transported to Sharp Hospital for treatment of her bodily injury.

10. On July 10, 2003, in the Superior Court of California, County of San Diego, East County Division, in the case entitled *The People of the State of California v. Tracie Celeste Bradley*, case number SCE 230575, on her plea of guilty, Respondent was convicted of violation of Vehicle Code section 23153, subdivision (a), driving under the influence of alcohol with a blood alcohol which proximately caused bodily injury to another, a felony. Respondent's BAC was .28. Respondent remains on criminal probation until August 28, 2008, unless granted early termination of probation.

11. As a consequence of the second DUI conviction (Findings 9 and 10), on August 29, 2003, the Court placed Respondent on probation for five years formal probation and ordered her to:

- serve 365 days in custody,
- pay a fine of \$2,000.00,
- pay restitution of \$5,000.00,
- attend and successfully complete an alcohol counseling program approved by her probation officer,
- complete a program of residential treatment and after care, if directed by her probation officer
- attend Alcoholics/Narcotics Anonymous (AA/NA) as directed by her probation officer,
- not use or possess any controlled substance without a valid prescription and submit to testing for the use of controlled substances/alcohol when required by the probation or law enforcement officer,
- totally abstain from the use of alcohol,

- register/enroll in and successfully complete the SB38 Program, as directed by her probation officer,
- whenever requested by the probation officer, a law enforcement officer or the court ordered treatment program, submit to any chemical test of blood, breath or urine to determine the blood alcohol content and authorize release of the results to the probation officer or the court,
- surrender her driver's license to the Court for forwarding to the Department of Motor Vehicles,
- not be in places, except in the course of employment, where alcohol is the main item for sale, and
- not drive a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device, certified pursuant to Vehicle Code section 13386,
- not contact victims, and
- had a right to appeal the foregoing determination.

12. Respondent has been convicted of a DUI offense that is substantially related to the qualifications, functions and duties of a registered nurse, by reason of Findings 9, 10 and 11.

13. Respondent has been convicted of an offense that involved the consumption of alcohol to an extent and in a manner dangerous to herself, another person and/or the public, by reason of Findings 9, 10 and 11. Given the foregoing, her misconduct constitutes unprofessional conduct.

Respondent provided evidence of explanation and rehabilitation.

- She accepts responsibility for her misconduct. She is remorseful for her misconduct. She candidly admitted her mistakes. She appreciates the egregious nature of her offense and that, on both occasions, her BAC was high, dangerous and potentially deadly. She realizes the potential injury to the public and her daughter and that she and another woman were, in fact, injured during the second incident. She has complied with the terms and conditions of and is scheduled to complete probation in August 2008.
- There is no evidence that she has been at work with alcohol on her breath or that any patient has been injured or placed in jeopardy because of Respondent's alcoholic disease.
- The conduct that resulted in Respondent's convictions occurred as a result of her alcohol abuse. She has been sober since April 25, 2003, over three years. She has obtained treatment, better understands her substance abuse problem and has taken steps to maintain her sobriety.

Following her first conviction, Respondent completed a six-month court ordered program, which included attending AA meetings twice a week and group meetings once a week; in addition, she was subjected to random checks at any time to determine whether there was alcohol in her system.

She recognizes that she "did not learn enough" following completion of the foregoing program because she resumed drinking alcohol one year after her first conviction and continued drinking and driving. Following the second conviction, Respondent completed a court ordered 18-month program; she was required to attend two to three AA meetings/week, one-on-one counseling with Gary Pesavento, M.D. (Dr. Pesavento), a psychiatrist, and group counseling once a week. She treated with Dr. Pesavento for one year; she had sessions with him both before and after her incarceration.

She understands that she is a binge drinker and that her triggers are boredom and anger. She is spiritual and busy with work and her family. She finds cooking to be therapeutic; she finds her job to be therapeutic. Her support system includes her husband, parents and siblings, supervisors, coworkers and a few close friends. She has suffered tremendously as a result of criminal acts, particularly in her familial and employment relationships.

She firmly believes that she will not engage in this misconduct again because it is wrong and is fearful of the consequences both from the criminal court and her employer.

- Should the Board allow her to retain her license, she is willing to comply with any terms and conditions of probation.

14. Respondent's convictions have had a significant impact on her nursing career.

She graduated from Point Loma Nazarene College in December 1995, worked at University of California at San Diego for one year and has been employed by Veterans' Administration Hospital (VA) since October 1996. Though Respondent did not notify the Board of either conviction, her employer and many co-workers are aware.

After Respondent was released from jail in or about January 2004, Janet Jones (Jones), the VA's Director of Nursing, recommended termination of Respondent's employment. Respondent requested reconsideration. After his review, Gary Rossi, Director, CHE, elected to "remove" Respondent from employment. During his meeting with her on January 27, 2004, Respondent disclosed that she had a substance abuse problem. Further she disclosed to him that, by the terms and conditions of her criminal probation, she was required to enroll in an Outpatient Rehabilitation Program, attend AA meetings and check in with her Parole Officer once a week. Rossi decided to hold her removal in abeyance for one year if she elected to execute and comply with the "Last Chance Agreement" (Agreement), dated February 20, 2004. The relevant terms and conditions of the Agreement are:

- **"You must maintain satisfactory attendance. Every unscheduled absence must be supported by acceptable documentation establishing an emergency**

situation. Absences for sick leave issues must be supported by acceptable medical documentation to include a complete diagnosis that establishes that you were incapacitated for duty. Any exception to presentation of documentation for an emergency situation and/or medical documentation must be cleared through your Clinical Service Director (CSD) when calling to request the absence.

- **You must** provide monthly reports for the period of one (1) year beginning in March from your Parole Officer to your CSD. The reports should indicate whether or not a substance abuse test was conducted (blood test, breathalyzer, etc.) during the month of the report and the results; attendance of required AA meetings; and attendance of the Outpatient Rehabilitation Program; and whether or not you are in good standing and complying with the requirements of your probation. You are responsible to arrange for submission and/or presentation of these reports from your Parole Officer. These reports should be timely with receipt no later than the 30th day of each month.
- **You must** furnish acceptable documentation that you have successfully completed the Rehabilitation Program within 15 days of completion of such program.
- **You may** be asked by Employee Health to voluntarily give a blood sample in order to detect a blood alcohol level on reasonable suspicion, aside from the mandated monthly random drug testing required for your position.

In addition to the foregoing, Respondent was required to waive all appeal rights. Further, according to the Agreement, she is required to maintain herself in a manner "reflecting credit upon the VA. This includes maintaining satisfactory attendance, performance and conduct." Respondent's failure to comply with the terms of the Agreement could impact Rossi's decision to stay termination of her employment. Respondent executed the Agreement on March 4, 2004. Had she elected not to be a party to the agreement, her employment termination would have been effective March 12, 2004. Respondent complied with the foregoing and was released in or about March 2005.

During her career at VA, Respondent has been and continues to be respected by colleagues and patients for her skills, judgment and cooperation as a nurse. She provides knowledgeable, compassionate nursing care for her patients. An award that she received and her job performance evaluations support the foregoing. On a regular basis, she obtains additional education and training.

15. Pursuant to Business and Professions Code section 125.3, Complainant seeks recovery of the costs of investigation and enforcement of the allegations set forth in the Accusation in the amount of \$8,762.50. In support of this request, Complainant submitted "Certification of Costs of Investigation and Prosecution" (Certification), the Declaration of Deputy Attorney General James M. Ledakis (DAG Ledakis) and Declarations of investigators involved in this case. Each Declaration describes the tasks performed, the amount of time spent on the tasks and the hourly rate charged.

The amounts set forth in the Declarations are inconsistent with Complainant's Certification. DAG Ledakis explained that the Certification does not include his costs incurred during 2006 fiscal year for which the Board will be billed. There is no explanation for the discrepancy between the Certification and the Declarations of the investigators. Given the foregoing, the costs of investigation are reduced to \$5,413.00, and the costs of enforcement are increased to \$2,688.00, a total of \$8,101.00.

Respondent does not object to the costs but established that it would be a financial burden for her, given the remaining expenses associated with her criminal case and supporting her family.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's license as a registered nurse under Business and Professions Code section 2761, subdivision (a), in that she suffered two DUI offenses that are substantially related to the qualifications, functions and duties of a registered nurse, by reason of Findings 3, 4, 5, 6, 7, 9, 10, 11 and 12.

2. Cause exists to discipline Respondent's license as a registered nurse under Business and Professions Code section 2762, subdivision (b) for unprofessional conduct relating to alcohol consumption to an extent and in a manner dangerous to herself, another person or the public by reason of Findings 3, 4, 5, 6, 8, 9, 10, 11 and 13.

3. Cause exists to discipline Respondent's license as a registered nurse under Business and Professions Code section 490 in that she has been convicted of crimes that are substantially related to the qualifications, functions and duties of a registered nurse, by reason of Findings 3, 4, 5, 6, 7, 9, 10, 11 and 12.

4. Given the facts (Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13), the violations (Legal Conclusions 1, 2 and 3), the Board's criteria for rehabilitation set forth in California Code of Regulations, title 15, section 1445, and the evidence of explanation and rehabilitation (Findings 14 and 15), the question is appropriate discipline.

Administrative proceedings to discipline a professional license are intended to protect the public, not punish the licensee. *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763.

Complainant seeks revocation of Respondent's license arguing that it would be contrary to the public interest to allow her to continue to practice as a registered nurse. Respondent admits her misconduct, offered evidence of rehabilitation and prays for a probationary license. As a result of her serious abuse of alcohol, Respondent engaged in repeated misconduct that demonstrated a disregard for the safety of herself, another person and the public. She established that she appreciates the wrongfulness of her acts, is remorseful, accepts responsibility for her misconduct and has taken significant action to attain and maintain sobriety. According to the record, it has been over three years since she

has engaged in acts which would constitute a basis for discipline. There is no evidence that her substance abuse problem has had any impact, whatsoever, on patient care. Considering the foregoing, it would not be contrary to the public interest to allow Respondent to practice as a registered nurse with a probationary license.

5. Complainant seeks recovery of the reasonable costs of investigation and enforcement in the amount of \$8,101.00. In determining reasonableness, Business and Professions Code section 125.3, California Code of Regulations, title 1, section 1042 and the factors set forth in *Robert Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 have been considered.

The *Zuckerman* factors include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's subjective good faith belief in the merits of her position, whether the licensee has raised a colorable challenge to the proposed discipline, a determination regarding the financial ability of the licensee to pay, and whether the investigation was appropriate to the alleged misconduct.

Complainant established that Respondent committed the violations alleged in the Accusation (Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 and Legal Conclusions 1, 2 and 3). Considering the egregious facts and circumstances underlying the convictions, Complainant seeks revocation of her license. She candidly admitted her bad acts. Respondent provided sufficient evidence to establish that the appropriate discipline is not revocation but a probationary license. In addition, Respondent established that it would be a financial burden for her to pay the costs.

Given the foregoing, the reasonable costs of investigation and enforcement are \$3,600.00.

ORDER

IT IS HEREBY ORDERED that Registered Nurse License Number 526020 issued to Respondent Tracie Celeste Bradley Thomas is revoked. However, the revocation is stayed and Respondent Tracie Celeste Bradley Thomas is placed on probation for five years on the following conditions.

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

A. Respondent shall obey all federal, state and local laws. Within seventy-two (72) hours of occurrence, she shall provide a full and detailed written account of any and all violations of law to the Board. To permit monitoring of compliance with this condition,

Respondent shall submit completed fingerprint forms and fingerprint fees within forty-five (45) days of the effective date of this Decision, unless previously submitted as part of the licensure application process.

Since Respondent remains on Criminal Probation, any violation of Court order or order of her Parole Agent constitutes a violation of these probation terms and conditions and may result in the filing of an Accusation and/or Petition to Revoke Probation.

B. Respondent shall comply with the terms and conditions of the Board's Probation Program and shall cooperate with the Board's representatives in monitoring and investigation of her compliance with the Board's Probation Program. Respondent shall provide the Board with written notification of any address change within fifteen (15) days. At all times Respondent shall maintain an active, current license status with the Board, including during any period of suspension.

C. During the period of probation, Respondent shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

D. Periods of residency or practice as a registered nurse outside of the State of California shall not apply to the reduction of this probationary term. Respondent's probation is tolled, if and when she resides outside the State of California. Within fifteen (15) days, Respondent must provide written notice to the Board of any change of residency or practice outside the State of California and within thirty (30) days prior to re-establishing residency or returning to practice within the State of California.

Respondent shall provide a list of all states and territories where she has been licensed as a registered nurse, vocational nurse or practical nurse. Further, Respondent shall provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

E. During the period of probation, Respondent shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. The foregoing documents shall contain statements relative to Respondent's compliance with the terms and conditions of the Board's Probation Program. She shall execute immediately all release of information forms that are required by the Board or its representatives.

Respondent shall provide a copy of this Decision to the nursing regulatory agency in every State and territory in which she is licensed as a registered nurse.

F. During the period of probation, Respondent shall engage in the practice of registered nursing in California for a minimum of twenty-four (24) hours per week for six (6) consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of twenty-four (24) hours per week for six (6) consecutive months or as determined by the Board.

If Respondent does not comply with this condition during the probationary term and has presented sufficient documentation of her good faith efforts to do so, and, if no other conditions have been violated, in its discretion, the Board may grant an extension of the probationary period up to one (1) year without further hearing in order to comply with this condition. During the one (1) year extension, all original conditions of probation shall apply.

G. Before commencing or continuing employment, paid or voluntary, as a registered nurse, Respondent shall obtain prior approval from the Board. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request by the Board.

Respondent shall provide a copy of this Decision to her employer and immediate supervisor prior to commencement of any nursing or other health care related employment.

Respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing or other health care related employment, with a full explanation of the circumstances surrounding the termination.

H. Respondent shall obtain prior approval from the Board regarding her level of supervision and/or collaboration before commencing employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved in advance.

Respondent's level of supervision and/or collaboration may include, but is not limited to, the following:

1. Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

2. Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.
3. Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.
4. Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with her as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

I. Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, for a temporary nurse placement agency, as a traveling nurse or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. She shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict her from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent works or intends to work in excess of forty (40) hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

J. At her own expense, Respondent shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six (6) months prior to the end of her probationary term.

She shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

K. Within forty-five (45) days of the effective date of this Decision, at her expense, Respondent shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of Respondent's physical condition and capacity to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program shall be instituted and followed by Respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and Respondent by telephone. The Board shall request that the Attorney General's office prepare an Accusation or Petition to Revoke Probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified Respondent that a medical determination permits her to resume practice. This period of suspension shall not apply to the reduction of this probationary time period.

If Respondent fails to have the above assessment submitted to the Board within the 45-day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

L. Prior to or during the probationary period, at her expense, Respondent shall successfully complete a Board-approved treatment/rehabilitation program of at least six months or shall have completed such a program prior to the commencement of probation. As required, reports shall be submitted by the program on forms provided by the Board. If Respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, within forty-five (45) days from the effective date of this Decision, Respondent shall be enrolled in a Board-approved program. Failure to successfully complete the program within the first nine (9) months of probation shall be deemed a violation of probation.

Based on Board recommendation, each week, Respondent shall be required to attend at least one but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting

or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

M. Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so and are part of documented medical treatment. Respondent shall cause to be sent to the Board, in writing and within fourteen (14) days, by the prescribing health care professional, a report identifying the medication, dosage, the date the medication was prescribed, Respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of Respondent's history of substance abuse and will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine or to consult with a specialist in addictive medicine.

N. At her expense, Respondent shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of her current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and shall constitute a violation of probation.

At any time, during the period of probation, Respondent shall cooperate with the Board or its representatives, and shall submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances, when requested.

If Respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a Petition to Revoke Probation and/or Accusation, the Board may suspend Respondent from practice pending the final decision on the Petition to Revoke Probation and/or Accusation. This period of suspension will not apply to the reduction of the probationary time period.

If Respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, immediately, Respondent shall cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a Petition to Revoke Probation and/or an Accusation, the Board may suspend Respondent from practice pending the final decision on the Petition to Revoke Probation or the Accusation. This period of suspension will not apply to the reduction of this probationary time period.

O. Within forty-five (45) days of the effective date of this Decision, Respondent shall have a mental health examination including psychological testing as appropriate to determine her capability to perform the duties of a registered nurse. The examination shall be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner shall submit a written report of the assessment and recommendations to the Board. Respondent shall be responsible for and pay all costs associated therewith. Respondent shall institute and follow recommendations for treatment, therapy or counseling made as a result of the mental health examination.

If it is determined that Respondent is unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall notify the Board and Respondent immediately by telephone, and the Board shall request that the Attorney General's office prepare an Accusation and/or Petition to Revoke Probation. Respondent shall cease practice immediately and may not resume practice until notified by the Board. During the period of suspension, Respondent shall not engage in any practice for which a license issued by this Board is required, until the Board has notified her that a mental health determination permits her to resume practice. This period of suspension will not apply to the reduction of this probationary period.

If Respondent fails to have the above assessment submitted to the Board within the forty-five (45)-day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

P. At her expense, Respondent shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

Q. Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$3,600.00. Respondent shall be permitted to pay these costs in a payment plan approved by

the Board, with payments to be completed no later than three (3) months prior to the end of the probation term.

R. If Respondent violates the conditions of probation, after giving her notice and an opportunity to be heard, the Board may set aside the stay order and impose the stayed discipline (revocation) of Respondent's license.

During the period of probation, if a Petition to Revoke Probation and/or Accusation is filed against Respondent's license or the Attorney General's Office has been requested to prepare a Petition to Revoke Probation and/or Accusation against her license, the probationary period shall automatically be extended and shall not expire until the Petition to Revoke Probation and/or Accusation is acted upon by the Board.

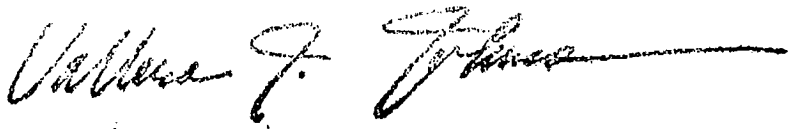
S. During probationary period, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy these conditions of probation, she may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request, to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent shall no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of her license history with the Board. Respondent may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- two years for a license surrendered for any reason other than a mental or physical illness; or
- one year for a license surrendered for mental or physical illness.

Upon successful completion of probation, Respondent's license shall be fully restored.

DATED: 12/27/06



VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

1 BILL LOCKYER, Attorney General
of the State of California
2 JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
3 California Department of Justice
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6
7 Attorneys for Complainant

8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2006 - 112

11 TRACIE CELESTE BRADLEY THOMAS
9070 Lemon Street
12 Spring Valley, CA 91977

A C C U S A T I O N

13 Registered Nursing License No. 526020

14 Respondent.

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16 Complainant alleges:

17 **PARTIES**

18 1. Ruth Ann Terry, M.P.H., R.N., Executive Officer (Complainant) brings
19 this Accusation solely in her official capacity as the Executive Officer of the Board of Registered
20 Nursing.

21 2. On or about September 3, 1996, the Board issued Registered Nursing
22 License Number 526020 to TRACIE CELESTE BRADLEY THOMAS, RN (Respondent). The
23 registered nursing license was in full force and effect at all times relevant to the charges brought
24 herein and will expire on September 30, 2006, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, under the authority of the
27 following laws. All section references are to the Business and Professions Code unless otherwise
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1 or verdict of guilty or a conviction following a plea of nolo contendere. Any
2 action which a board is permitted to take following the establishment of a
3 conviction may be taken when the time for appeal has elapsed, or the judgment of
4 conviction has been affirmed on appeal, or when an order granting probation is
5 made suspending the imposition of sentence, irrespective of a subsequent order
6 under the provisions of Section 1203.4 of the Penal Code.

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9 9. Section 493 of the Code states:

10 Notwithstanding any other provision of law, in a proceeding conducted by
11 a board within the department pursuant to law to deny an application for a license
12 or to suspend or revoke a license or otherwise take disciplinary action against a
13 person who holds a license, upon the ground that the applicant or the licensee has
14 been convicted of a crime substantially related to the qualifications, functions, and
15 duties of the licensee in question, the record of conviction of the crime shall be
16 conclusive evidence of the fact that the conviction occurred, but only of that fact,
17 and the board may inquire into the circumstances surrounding the commission of
18 the crime in order to fix the degree of discipline or to determine if the conviction
19 is substantially related to the qualifications, functions, and duties of the licensee in
20 question.

21 As used in this section, 'license' includes 'certificate,' 'permit,'
22 'authority,' and 'registration.'

23
24 10. Section 125.3 of the Code provides, in pertinent part, that the Board may
25 request the administrative law judge to direct a licensee found to have committed a violation or
26 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
27 and enforcement of the case.

28 **Facts:**

1st DUI Conviction, August 13, 2001

11. On August 14, 2001, San Diego Superior Court for the East County
Division, Case No. C 214691, accepted Respondent, Tracie Bradley Thomas' guilty plea to
violation of Vehicle Code section 23152(b) for driving under the influence of alcohol while
having a .08 per cent or more, by weight of alcohol in her blood.

12. On April 30, 2001, Respondent, was arrested by the California Highway
Patrol (CHP) for driving under the influence of alcohol. Respondent was stopped by the CHP for
driving on the wrong side of the road. At the time of her arrest, Respondent had an open
container of "Kenya Gold Liquor" in the front seat and her six month old infant in the back seat.
Respondent had a strong smell of alcohol, slurred speech and was uncooperative when the
officers attempted to place her under arrest. Respondent struggled with the officers and used foul

1 language to insult them. Respondent was transported to the station while her infant child was
2 transported to her parents home. Respondent refused to have her blood alcohol level tested.
3 Thereafter, she was transported to the CHP Office for a non-consensual blood draw. Following
4 the blood draw, respondent was verbally abusive to the officers, she called them, "Fu.. stupid
5 idiots," and she told them they better not ever come into her hospital. Once at Los Colinas,
6 respondent was taken to the medical screening where she told the officers, "I'm going to shove
7 an enema up your ass without Vaseline." Respondent's blood alcohol level was .30%, three
8 times the legal limit.

9 13. On July 27, 2001, a four count criminal misdemeanor complaint was filed
10 against respondent as follows:

- 11 Count 1: Driving under the influence and refusal of chemical test.
12 Count 2: Driving while having a measurable alcohol level in excess of .20%.
13 Count 3: Resisting an officer.
14 Count 4: Disturbing the peace by offensive language.

15 14. On August 17, 2001, respondent pled guilty to Count 2, driving under the
16 influence of alcohol with an enhancement for violation of Vehicle Code section 23578 for a
17 blood alcohol level of .20% or more and refusal to take a chemical test, the balance of the
18 complaint was dismissed.

19 15. As part of her guilty plea, respondent was placed on five years probation,
20 two days custody, pay a \$1,600 fine and complete the first conviction program and obey all laws.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(1st DUI Conviction, August 13, 2001)**

23 16. Respondent is subject to disciplinary action under Business & Professions
24 Code section 2761(a) in that she was convicted of a DUI offense that is substantially related to
25 the qualifications, functions and duties of a registered nurse, in which event the record of the
26 conviction shall be conclusive evidence thereof.

27 17. Complainant incorporates by reference paragraphs 11 through 15, as set
28 forth above.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct re: DUI Conviction)**

3 18. Respondent is subject to disciplinary action under section 2762(b) for
4 unprofessional conduct relating to alcoholic consumption to an extent and in a manner dangerous
5 to herself, to others, or the public.

6 19. Complainant incorporates by reference paragraphs 11 through 15, as set
7 forth above.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(DUI Conviction-Business & Professions Code section 490)**

10 20. Respondent is subject to disciplinary action under section 490 in that
11 respondent was convicted of driving under the influence of alcohol in Case No. C 214691.

12 21. Complainant incorporates by reference paragraphs 11 through 15, as set
13 forth above.

14 **Facts:**

15 **2nd DUI Conviction, July 10, 2003**

16 22. On July 10, 2003, while still on probation for her first DUI conviction,
17 Respondent was charged with a second complaint in San Diego Superior Court for the East
18 County Division, in Case No. CG 230875, for violating Vehicle Code section 23153(a), (felony)
19 for driving under the influence of alcohol and causing bodily injury to another, and for violation
20 of Vehicle Code section 23153(b), (felony) for driving under the influence of alcohol with a
21 blood alcohol level of .08% or more, and causing bodily injury. Respondent's blood alcohol
22 level was .28%.

23 23. On April 25, 2003, while driving under the influence of alcohol,
24 Respondent rear ended another car. Respondent and the other driver moved their cars to a nearby
25 parking lot. A CHP officer conducted his interviews and investigation. Respondent appeared
26 glassy eyed and her speech was slow. Respondent admitted to the officer that she had been
27 drinking earlier. Based upon respondent's objective symptoms, the officer arrested her for
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1 driving under the influence of alcohol. Respondent was transported to Sharp hospital for a blood
2 draw and the other driver was transported to Sharp Hospital for treatment for her injuries.

3 24. On July 10, 2003, as part of her guilty plea, Respondent admitted to
4 violating Vehicle Code section 23153(a), felony driving under the influence of alcohol with
5 bodily injury. As a result, respondent was sentenced to five years probation, 365 days in custody,
6 a fine of \$2,000.00, restitution of \$5,000.00 and court costs.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(2nd DUI Conviction, July 10, 2003)**

9 25. Respondent is subject to disciplinary action under Business & Professions
10 Code section 2761(a) in that she was convicted of a DUI offense that is substantially related to
11 the qualifications, functions and duties of a registered nurse, in which event the record of the
12 conviction shall be conclusive evidence thereof.

13 26. Complainant incorporates by reference paragraphs 22 through 24, as set
14 forth above.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct re: DUI Conviction)**

17 27. Respondent is subject to disciplinary action under section 2762(b) for
18 unprofessional conduct relating to alcoholic consumption to an extent and in a manner dangerous
19 to herself, to others, or the public.

20 28. Complainant incorporates by reference paragraphs 22 through 24, as set
21 forth above.

22 **SIXTH CAUSE FOR DISCIPLINE**

23 **(DUI Conviction-Business & Professions Code section 490)**

24 29. Respondent is subject to disciplinary action under section 490 in that
25 respondent was convicted of driving under the influence of alcohol in Case No. CG 230875.

26 30. Complainant incorporates by reference paragraphs 22 through 24, as set
27 forth above.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Registered Nursing License Number 526020, issued to TRACIE CELESTE BRADLEY THOMAS, RN;
2. Ordering Tracie Celeste Bradley Thomas, to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 1/23/06


RUTH ANN TERRY, M.P.H., R.N.,
Executive Officer
Board of Registered Nursing
State of California
Complainant

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